

BEFORE THE ARIZONA STATE BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

In the Matter of:)	No. 96A-002-OSA
)	
SUSAN MARGARET SMITH, D.O.)	
Holder of License No. 2606)	STIPULATION FOR
For the practice of)	CONSENT ORDER
Osteopathic Medicine in the)	
State of Arizona)	
_____)	

STIPULATION

By mutual agreement and understanding, the Arizona State Board of Osteopathic Examiners in Medicine and Surgery ("Board") and Susan Margaret Smith, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition of this matter.

1. Respondent acknowledges that she had read this Stipulation and the attached Stipulated Consent Order; and, Respondent is aware of and understands the content of these documents.

2. Respondent understands that by entering into this Stipulation, she voluntarily relinquishes any rights to a hearing on the matters alleged as ground for Board action or to seek judicial review of the consent order in state or federal court.

3. Respondent understands that this Stipulation and Order will not become effective unless approved by this Board and signed by its Executive Director.

4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public record which may be disseminated as a formal action of the Board.

5. Respondent admits to the facts and consents to all the terms contained in the Stipulated Order.

6. Respondent acknowledges and agrees that upon signing and returning this document to the Board, she may not later revoke or amend this stipulation or the consent order, without Board approval.

IT IS HEREBY STIPULATED AND AGREED that any violation of said Board Order constitutes unprofessional conduct as defined in A.R.S. 32-1855.

REVIEWED AND ACCEPTED this 24th day of April, 1997.

Susan M. Smith, D.O.

Susan Margaret Smith, D.O.

State of Arizona)
) ss
County of)

This instrument was acknowledged before me this 24th day of April, 1997, by the above-named individual.

Lara Christopher
Notary

My Commission Expires:

Nov. 17, 2000



Reviewed and approved as to form
by counsel for Respondent:

Karen Owens

Karen Owens

REVIEWED AND SIGNED this 29th day of April, 1997, for
the Board by:

Ann Marie Berger
Ann Marie Berger
Executive Director

BEFORE THE ARIZONA STATE BOARD OF

OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

In the Matter of:)	
)	
SUSAN MARGARET SMITH, D.O.)	FINDINGS OF FACT,
Holder of License No. 2606)	CONCLUSIONS OF LAW AND
For the practice of osteopathic)	CONSENT ORDER
medicine in the State of Arizona)	
_____)	

FINDINGS OF FACT

1. Respondent and the Board executed a document called Stipulation for Findings of Fact, Conclusions of Law and Consent Order effective May 17, 1995, (hereinafter "Consent Order"). Pursuant to this Consent Order, Respondent was placed on probationary licensee status for a period of four years and was subject to various conditions identified therein. (State's exhibit No. 3).

2. Pursuant to paragraph 5 of the Consent Order, Respondent was ordered to "abstain completely from the consumption of alcoholic beverages. . . ." At the hearing, December 18 and 19, 1996, three witnesses offered credible and consistent testimony under oath that they observed Respondent drinking alcoholic beverages on March 23, 1996 at the home of Renee Avalos Winqwest and at the Mesquite Bar in Globe, Arizona. Two of these witnesses also testified that they observed Respondent drinking alcoholic beverages at the Crestline Steakhouse in Globe, Arizona during the evening on a previous

occasion in March of 1996. Respondent denies these allegation in her Statement of Susan M. Smith, D.O. and Answer to Complaint (hereinafter "Statement") received by the Board on March 24, 1997 and submits that she only drank nonalcoholic beverages on the occassions in question and at other times after being placed on Probation.

3. On June 26, 1996, Respondent appeared before the Board members at a public meeting during which Respondent was informed of the allegation that several witnesses had observed her drinking alcohol on several occasions. Respondent denied such allegation stating as follows:

Dr. Smith: First of all, I want to say that I'm shocked and appalled at the allegations that I have just read today . . . I have not drank alcohol since before I went to Sierra Tucson. I have been clean and sober since that time . . . All three of them [witnesses] said I was drinking when in fact I went out with them. I was in a bar but I was not drinking alcohol. I had people try and buy me drinks which I declined. . . .

Ms. McElfresh: Are you saying that the employer and the employees are lying?

Dr. Smith: Yes.

State's Exhibit No. 5, pp. 22-26. The Administrative Law Judge found, by denying the allegation, Respondent knowingly and intentionally made a material false statement to the Board in connection with the practice of medicine. Respondent denies this allegation in her Statement and states she never drank alcohol on the occasions in question.

4. From approximately March 4, 1996 to May 22, 1996, Respondent was employed as a physician at the Kaye Medical Center in Globe, Arizona, and supervised by Dr. Romana Woodriffe. During her employment, Respondent regularly failed to complete appropriate notations and dictation for patient files in a timely fashion. Respondent also failed to timely and completely prepare patient charts for patients she treated at Cobre Valley Hospital, in Claypool, Arizona. Such conduct fell below the customary standard of care by physicians and may have been injurious to the care and treatment of the patients.

5. Pursuant to the terms of the Consent Order, on May 28, 1996 at 10:00 a.m. the Board's staff investigator directed Respondent to provide a urine sample for drug testing at Cobre Valley Hospital within 60 minutes. Respondent failed to provide the urine sample as directed.

6. By failing to appear and participate at the administrative hearing, Respondent presented no evidence in defense or in mitigation of the allegations of unprofessional conduct. Respondent did provide a Statement to the Board on March 24, 1997 in which she addressed the allegations of unprofessional conduct.

CONCLUSIONS OF LAW

1. It is unclear whether or not Respondent's conduct as shown in Findings of Fact No. 2 constitutes unprofessional conduct as defined in A.R.S. § 32-1854(26), i.e. violating a formal order, probation or stipulation issued by the Board under this chapter. Respondent has not tested positive for alcohol in any Board ordered random urine drug screens and may have been consuming nonalcoholic beverages that appeared to look like alcoholic beverages.

2. It is unclear whether or not Respondent's conduct as shown in Findings of Fact No. 3 constitutes unprofessional conduct as defined in A.R.S. § 32-1854(15), i.e., knowingly making any false or fraudulent statement in connection with the practice of medicine.

3. Respondent's conduct as shown in Findings of Fact No. 4 above constitutes unprofessional conduct as defined in A.R.S. § 32-1854(21), i.e., failing or refusing to maintain adequate records on a patient, and as defined in A.R.S. § 32-1854(6), i.e., engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard.

4. Respondent's conduct as shown in Findings of Fact No. 5 constitutes unprofessional conduct as defined in A.R.S. § 32-1854(26), i.e., violating a formal order, probation or stipulation issued by the Board under this chapter.

CONSENT ORDER

Pursuant to the authority vested in the Board by A.R.S. § 32-1855 and A.R.S. § 41-1061(D) IT IS HEREBY ORDERED THAT:

1. Dr. Smith is CENSURED for unprofessional conduct as more specifically described and defined in the previously set forth Conclusions of Law at paragraphs 3 and 4; and,

2. Dr. Smith's probationary status is continued for a period of five (5) years from the date of issuance of this Order and Dr. Smith ordered to comply with all terms and conditions of probation as executed on May 17, 1995 as well as the following additional requirements:

- (A) Dr. Smith will change her treating psychiatrist within twenty days of the execution of this Order, the new treating psychiatrist to be approved either by the Board or the Board's Executive Director. Respondent's therapist shall receive a copy of this Order as well as the May 17, 1997 Consent Order. Respondent shall waive all confidentiality rights and disclose all relevant information. The treating therapist shall be directed by Respondent to send to the Board a written progress report the first day of every month.
- (B) Dr. Smith shall reimburse the Board for costs related to the Independent Medical and Psychological Examinations performed by Dr. Fletcher and Dr. Zweig in February, 1997 within sixty days of the date of issuance of this Order.
- (C) Dr. Smith shall also, as part of her probation: (A) submit to and cooperate in any independent medical or psychological evaluation that is ordered by the Board for Dr. Smith and conducted by the Board's designated physician and/or psychologist which shall be paid for by Dr. Smith.

- (D) Commencing from the date of issuance of this Order, Dr. Smith shall obtain twenty (20) hours of continuing medical education, approved by the Board, each year for the next two years concerning the topic of proper charting. Dr. Smith shall submit to the Board's Executive Director documentation confirming her attendance and completion of the education program approved by the Board; and, this requirement for continuing medical education shall be in addition to the minimum statutory requirement for renewal of Board license as specified in A.R.S. § 32-1825(B)
- (E) Dr. Smith shall at all times implement the following procedures for maintaining complete office and patient records that follow the "SOAP" format, i.e., sections that document subjective complaints, objective findings and assessment that includes a differential diagnosis and a plan for further care or steps in a work-up.
- (F) Dr. Smith shall contact the Board office daily between the hours of 9:00 a.m. and 11:00 a.m., and if told to report to the Board office or other designated location for bodily fluid testing, shall report within sixty minutes of receiving said notification. The Executive Director will provide Dr. Smith with the contact person and phone number.

12. Respondent shall comply with all terms and conditions imposed by any Arizona hospital at which she has or later obtains privileges to practice; and, Dr. Smith shall provide to said hospital's chief executive officer a copy of this Consent Order as well as the May 17, 1995 Consent Order, in their entireties, within 5 days of obtaining said privileges.

13. Respondent may have her license to practice as an osteopathic physician restricted, suspended or revoked by the Board in the future if:

- (a) The Board finds that Respondent does not have the requisite mental, physical and emotional fitness to safely continue the practice of medicine; or
- (b) There are new grounds for finding unprofessional conduct concerning Respondent; or
- (c) Fails to comply fully with conditions and terms of this Consent Order or the May 17, 1995 Consent Order.

ISSUED AND EFFECTIVE this 28th day of April, 1997.

ARIZONA BOARD OF OSTEOPATHIC
EXAMINERS IN MEDICINE AND SURGERY

Ann Marie Berger
Ann Marie Berger
Executive Director

Served by personal delivery or by sending
U.S. Certified Mail this 30th day of
April, 1997 to:

Susan Smith, D.O.
P.O. Box 40502
Mesa AZ 85274-0502

Mailed this 30th day of April
1997 to:

Karen C. Owens, Esq.
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